

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

KEN JOHANSEN, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIBERTY MUTUAL GROUP, INC.; and  
SPANISH QUOTES, INC. d/b/a  
WESPEAKINSURANCE,

Defendants,

LIBERTY MUTUAL GROUP, INC.,

Crossclaimant,

v.

SPANISH QUOTES, INC. d/b/a  
WESPEAKINSURANCE,

Crossdefendant,

LIBERTY MUTUAL GROUP, INC.,  
LIBERTY MUTUAL INSURANCE  
COMPANY,

Third-party Plaintiffs,

v.

PRECISE LEADS, INC., and DIGITAS, INC.,

Third-party Defendants

Civil Action No. 1:15-cv-12920-ADB

**DECLARATION OF ANTHONY A. FROIO IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

I, Anthony A. Froio, declare as follows:

1. I am a partner with the law firm of Robins Kaplan LLP, counsel for Cross-Claimant and Third Party Plaintiff Liberty Mutual Group, Inc. ("LMG") and Third Party Plaintiff Liberty Mutual Insurance Company ("LMIC," and together with LMG, "Liberty") in the above-captioned matter. I am admitted before this Court and am a member in good standing of the bar in Massachusetts. I respectfully submit this declaration in support of Liberty's Motion for

Summary Judgment. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. Third Party Defendant Digitas, Inc. (“Digitas”) produced the Master Services Agreement, dated April 1, 2012, Bates-stamped DTAS000284 – DTAS000297, a true and correct copy of which is attached hereto as **Exhibit A**.

3. Digitas produced the DigitasLBI Statement(s) of Work, dated February 6, 2015, Bates-stamped DTAS000260 – DTAS000272, a true and correct copy of which is attached hereto as **Exhibit B**.

4. Digitas produced the Aggregator Service Agreement, dated October 31, 2013, Bates-stamped DTAS000273 – DTAS000283, a true and correct copy of which is attached hereto as **Exhibit C**.

5. Attached hereto as **Exhibit D** is a true and correct copy of the relevant portions of the deposition transcript of Liberty’s designated Rule 30(b)(6) witness Ryan Hemker, dated May 10, 2016.

6. LMG produced a screenshot from Invoca, Bates-stamped LM00031, a true and correct copy of which is attached hereto as **Exhibit E**.

7. Attached hereto as **Exhibit F** is a true and correct copy of LMG’s Objections and Responses to Plaintiff’s First Set of Interrogatories Propounded to LMG.

8. Attached hereto as **Exhibits G, H, I, J, K, L, M, and N** are true and correct copies of the relevant portions of the deposition transcript of Plaintiff Ken Johansen, dated May 26, 2016, and Exhibits 3, 4, 8, 9, 10, 11 and 12 used therein, respectively.

9. Third Party Defendant Precise Leads, Inc. produced the Affidavit of Anthony Romano, plus exhibits, a true and correct copy of which is attached hereto as **Exhibit O**.

10. Digitas produced an email chain that began with an email from Bailey Kunz to Laura Spinello on March 9, 2015, Bates-stamped DTAS000046 – DTAS000056, a true and correct copy of which is attached hereto as **Exhibit P**.

11. LMG produced another email chain that also began with an email from Bailey Kunz to Laura Spinello on March 9, 2015, Bates-stamped LM00087 – LM0089, a true and correct copy of which is attached hereto as **Exhibit Q**.

12. Digitas produced an email chain that began with email from Robert Maccioli to Christopher Li on March 9, 2015, Bates-stamped DTAS000063 – DTAS000065, a true and correct copy of which is attached hereto as **Exhibit R**.

13. Digitas produced an email chain that began with an email from Christopher Li on March 9, 2015, to which Jaime Pickles of We Speak responded, Bates-stamped DTAS000027 – DTAS000034, a true and correct copy of which is attached hereto as **Exhibit S**.

14. Digitas produced an email chain that began with an email from Robert Maccioli to Puna Paahana, Jaime Pickles and Dave Stafford on March 24, 2015, Bates-stamped DTAS000057 – DTAS000058, a true and correct copy of which is attached hereto as **Exhibit T**.

15. LMG produced call logs for the calls to (614) 791-XXXX, Bates-stamped LM00009-R001 – -R003 (redacted), a true and correct copy of which is attached hereto as **Exhibit U**.

16. Invoca produced call logs for the calls to (614) 791-XXXX, Bates-stamped INVOCA00001, a true and correct copy of which is attached hereto as **Exhibit V**.

17. For litigation that commenced almost four years ago in July 2015 and continues to this day, which involved extensive investigation and discovery, motion practice, interactions with numerous parties and third parties (whether or not added as a party to the litigation), and working with an expert on class certification issues, as of February 4, 2019, Liberty has incurred in excess

of \$1.4 million in legal fees and costs in the defense of the underlying litigation initiated by Mr. Johansen, the Cross-Claim and the Third Party Complaint.

18. Plaintiff agreed to a small five-figure settlement amount. Liberty asked Digitas and We Speak to pay the full settlement amount, in compliance with their indemnity obligations pursuant to the relevant contracts. They refused to pay the amount in full, thereby requiring Liberty to contribute a significant portion toward settlement.

19. On behalf of Liberty, I notified Digitas of the litigation initiated by Mr. Johansen on August 7, 2015 and provided a copy of the Complaint. A true and correct copy of my notice is attached hereto as **Exhibit W**.

20. I sent an email to counsel for Digitas on February 3, 2016, a true and correct copy of which is attached hereto as **Exhibit X**. Digitas never assumed any control of the defense or settlement of the case.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED this 28th day of February, 2019

/s/ Anthony A. Froio  
Anthony A. Froio